

JUL 24 1978

IN THE

MICHAEL RUDAK, JR., CLERK

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1802

IN THE MATTER OF THE TRUST KNOWN AS
GREAT NORTHERN IRON ORE PROPERTIES

CHARLES S. ARMS and
ELIZABETH P. ARMS,

Petitioners,

vs.

WILLIAM W. WATSON, LOUIS W. HILL, JR.,
HARRY L. HOLTZ, JOSEPH S. MICALLEF,
Trustees of the Great Northern Iron Ore Properties
Trust and BURLINGTON NORTHERN INC.,

Respondents.

BRIEF OF BURLINGTON NORTHERN INC. IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

J. NEIL MORTON
RICHARD E. KYLE
STEVE A. BRAND
2200 First National
Bank Building
St. Paul, Minn. 55101
(612) 291-1215

FRANK S. FARRELL
176 E. Fifth Street
St. Paul, Minn. 55101
(612) 227-0911

*Attorneys for Respondent
Burlington Northern Inc.*

Of counsel:
BRIGGS AND MORGAN

TABLE OF CONTENTS

	PAGE
Table of Authorities	ii
Statement of The Case	2
The judgment sought to be reviewed	2
The effect of the judgment	2
Creation of the trust	3
The trust estate	4
The successive estates of term and reversion	4
The reversion	4
Trust administration since 1906	5
The estates and interests of the trust beneficiaries under Minnesota law	6
The Arms claims regarding the Hepburn Act	6
The Hepburn Act	8
The Petition Presents No Question For Review By Certiorari Under 28 U.S.C. §1257(3) and The Rules of This Court	8
Conclusion	13
Appendix	
Annex A-Trust Agreement (December 7, 1906)	A-1
Annex B-Contract of Lake Superior Company, Limited and Great Northern Railway (October 20, 1899)	A-12

AUTHORITIES CITED

	PAGE
Federal Statutes:	
Commodities Clause, Hepburn Act, June 29, 1906, c 3591, §1, 34 Stat. 584, <i>codified in</i> 49 U.S.C. §1(8)	8
28 U.S.C. §1257(3)	8, 9, 13
Interstate Commerce Act (Hepburn Act) <i>See ante</i>	
 Minnesota Statutes:	
Minnesota Statutes, chapter 501 (1976)	2
Minnesota Statutes 501.19 (1976)	5
Minnesota Statutes 501.19, c 501 (1971)	5
Minnesota Statutes 501.33 (1971)	2
Minnesota Statutes 501.35 (1971)	2
Minnesota Revised Laws of 1905, §3249	2
Minnesota Revised Laws of 1905, §3256	5
Revised Statutes of the Territory of Minnesota, 1851, c 74, §18	5
 Cases:	
Arms v. Watson, 429 U.S. 1001, 97 S.Ct. 530, 50 L. ed. 2d 612 (1976)	7
In Re Trust Known as Great Northern Iron Ore Properties, 308 Minn. 221, 243 N.W.2d. 302, certiorari denied sub nom. Arms v. Watson, 429 U.S. 1001, 97 S.Ct. 530, 50 L. ed. 2d 612 (1976)	2
In the Matter of the Trust Known as Great Northern Iron Ore Properties (1978), — Minn. —, 263 N.W.2d. 610, February 10, 1978. Rehearing denied March 27, 1978	2

	PAGE
United States v. Delaware & Hudson Co., 213 U.S. 366 (1909)	11
United States v. Elgin, Joliet & Eastern Railway Co., 298 U.S. 492 (1936)	11
United States v. South Buffalo Railway Co., 383 U.S. 771 (1948)	11
 Secondary Authorities:	
Restatement of Trusts	3
4 A. Scott, <i>The Law of Trusts</i> (3d ed. 1967)	5

IN THE
Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1802

IN THE MATTER OF THE TRUST KNOWN AS
GREAT NORTHERN IRON ORE PROPERTIES

CHARLES S. ARMS and
ELIZABETH P. ARMS,

Petitioners,

vs.

WILLIAM W. WATSON, LOUIS W. HILL, JR.,
HARRY L. HOLTZ, JOSEPH S. MICALLEF,
Trustees of the Great Northern Iron Ore Properties
Trust and BURLINGTON NORTHERN INC.,

Respondents.

BRIEF OF BURLINGTON NORTHERN INC. IN
OPPOSITION TO PETITION FOR WRIT
OF CERTIORARI

STATEMENT OF THE CASE

The judgment sought to be reviewed

The judgment of the Supreme Court of Minnesota here in question was entered on March 27, 1978 pursuant to decision

In the Matter of the Trust Known as Great Northern Iron Ore Properties, — Minn. —, 263 N.W.2d 610 (1978) [Decided February 10, 1978, Rehearing denied March 27, 1978 (for which see Petitioners' Appendix, pp. A1-A21; A31)],

in the exercise of an *in rem* jurisdiction established under Minnesota Statutes 501.33 *et seq.* (1971)¹ The instant case is a sequel to

In Re Trust Known as Great Northern Iron Ore Properties, 308 Minn. 221, 243 N.W.2d 302, certiorari denied sub nom. *Arms v. Watson*, 429 U.S. 1001 (1976) (for which see Petitioners' Appendix, pp. A32-A44),

a case in which the Arms petitioners also sought certiorari. Both cases involve the same factual and legal subject matter.

The effect of the judgment

This case is solely concerned with property rights under Minnesota law, that is, the relative rights of successive equitable estates of term and reversion in Great Northern Iron Ore Properties, a trust established by Trust Agreement of December 7, 1906 (reproduced as *Annex A* of this Response).²

¹ M. S. 501.35 (1971), relating to construction of trust instruments and instructions to trustees, provides, among other things, that "Any trustee * * * [whose appointment has been confirmed in manner specified] may petition the court for instructions in the administration of the trust or for a construction of the trust instrument * * *."

² The trust was created under the authority of Minnesota Revised Laws, 1905, §3249. Its assets are Minnesota assets. Its administration is conducted in Minnesota subject to Minnesota Statutes, c. 501.

In the prior appeal it was determined (contrary to the Arms contentions) that the trust instrument limits successive estates of term and reversion in the trust property, that is:

—a present term estate for certificate holders, measured *pur autre vie* upon the lives of eighteen persons in being at December 7, 1906 plus twenty years in gross, and —a future interest in the nature of a reversion in the settlor, Lake Superior Company, limited (its successors and assigns), now vested in the respondent Burlington Northern Inc.

The judgment below determined (contrary to the Arms contentions) that the trust is governed by the common law of successive estates; that the trustees' discretionary powers of sale and distribution are not to be employed to maximize the term estate and minimize or destroy the estate in reversion; and that the trustees are to act with impartiality between the successive estates of term and reversion according to the general principles stated in the *Restatement of Trusts* (1935). (See opinion, A18-A20).

Creation of the trust

At December 7, 1906, the property which was about to become the trust estate consisted of the stocks of ten corporations then engaged in holding and leasing Minnesota mineral lands and interests to autonomous mining companies under royalty leases. These stocks and other assets were held by Lake Superior Company, Limited, a Michigan partnership association, under the terms of a contract of October 20, 1899, with Great Northern Railway Company (*Annex B* of this Response) which required Lake Superior to hold and dispose all of its assets in such manner as Great Northern might from time to time direct.

On December 7, 1906, Lake Superior Company, Limited, as settlor, established the trust of Great Northern Iron Ore Properties by Trust Agreement of that date (*Annex B* hereof).³ The agreement states the terms of trust; it is also the instrument of assignment by which the trust estate was transferred to the original trustees, who are predecessors in interest of the present trustee-respondents.

The trust estate

The original trust estate consisted solely of the stocks of the ten corporations above described. At December 31, 1956, all the corporate assets had been transferred to the direct ownership of the trustees as a consequence of corporate dissolutions. The present trust estate consists principally of Minnesota mineral lands and mineral interests and in minor part of cash and investment securities.

The successive estates of term and reversion

The trust instrument establishes the successive equitable estates of term and reversion described *ante*. It contemplates responsible management and orderly development of the trust properties during the term with distribution of mining proceeds (in the nature of rents and profits of land under Minnesota law) to certificate holders during the term or at its conclusion. The instrument also contemplates a reversion of all remaining properties to the settlor (its successors and assigns) at the end of the term.

The reversion

Reversion to the settlor, Lake Superior Company, Limited (its successors and assigns) is expressly provided by the terms

³ This was done by direction of Great Northern Railway Company authorized by corporate action of its shareholders and directors.

of trust.⁴ Under Minnesota law the reversion would exist in any event, whether reserved or not, because of a Minnesota statute which provides in effect that the limitation of a trust term without the limitation of a succeeding estate of reversion or remainder gives rise to a resulting trust for the settlor.⁵ This is a statutory statement of the common law.⁶

The reversion is now vested in Burlington Northern Inc. as successor in interest of Lake Superior Company, Limited and Great Northern Railway Company.⁷

Trust administration since 1906

Commencing at December 7, 1906, the royalties received by the ten proprietary corporations became the source of dividends paid to the trustees as stockholders. In turn the dividend receipts of the trustees became the source of distributions to the term tenants (certificate holders). After the dissolution of the proprietary corporations (completed as of December 31, 1956), the trustees have been and are the direct recipients of royalties, which are in turn the source of distribution to the term tenants (certificate holders).

At all times since the creation of the trust the mineral properties have been mined by independent operators under royalty leases. The operator-lessees have mined, severed and become owners of the severed ore in consideration of their payment

⁴ Not all of the supporting lives have yet terminated; hence the end of the term estate is now more than twenty years in the future.

⁵ Rev. Stat. of the Territory of Minnesota 1851, c. 74, §18; Minnesota Revised Laws of 1905, §3256; Minnesota Statutes §501.19 (1976).

⁶ See 4 A. Scott, *The Law of Trusts*, §§430, 430.1, 430.2 (3d. ed. 1967).

⁷ The reversion was assigned to Great Northern Railway Company by Lake Superior Company, Limited on February 3, 1913 in compliance with requirements of the contract of October 20, 1899. It is now vested in Burlington Northern Inc. as a consequence of merger of Great Northern Railway Company and other corporations in which Burlington Northern Inc. is the surviving corporation.

of royalties to the owner-corporations or (since December 31, 1956) directly to the trustees. The trustees' property rights in the minerals terminate at the time the ore is severed. The trustees have never engaged in mining operations, have never been owners of the severed ore and have never been shippers of ore.

The estates and interests of the trustees and the trust beneficiaries under Minnesota law

In Minnesota, trusts exist only by virtue of statute and all trusts are governed by detailed statutory provisions. M.S. 501.17 (1976), provides in relevant part:

"501.17 TRUSTEES TAKE ESTATE, WHEN. Every express trust * * * shall vest the whole estate in the trustee, in law and in equity, subject only to the execution of the trust; and the person for whose benefit the trust was created shall take no estate or interest in the lands but may enforce the performance of the trust in equity."

This statute has remained unchanged since its enactment *in haec verba* as Minnesota Territorial Laws of 1851, ch. 44, sec. 16. It contemplates that during the trust term the *cestuis que trustent* shall have no interest in the trust estate, legal or equitable, but only a chose in action to enforce performance.

The Arms claims regarding the Hepburn Act

At every stage of this litigation the Arms petitioners have asserted that the estate of reversion (although expressly limited) is unintended, illusory or insubstantial. In the first appeal they claimed that the reversion should be read out of the trust instrument; that the trust should be terminated; that the entire trust estate should be transferred to the term tenants (certificate holders) or to a corporation for their benefit.

Failing in this, they urged in the second appeal that the reversion should be minimized and, if possible, destroyed by invidious exercises of the trustees' discretionary powers of sale and distribution. Failing in this, they again seek certiorari.

One of several arguments advanced in aid of these claims was based on the Hepburn Act. In the trial of the case⁸ the Arms petitioners offered in evidence *Arms Exhibit 1*, consisting of excerpts from testimony of James J. Hill given in 1912 in Congressional hearings involving United States Steel Corporation. Therein Mr. Hill had stated that enactment of the Hepburn Act was one of the considerations leading to the creation of the trust of 1906.⁹ The Supreme Court of Minnesota has held that this evidence was inadmissible¹⁰ and in any event lacking in probative value. The record contains no other evidence involving the Hepburn Act.

In the present and previous appeals and in the present and previous petitions for certiorari the Arms petitioners have cited Mr. Hill's statement in aid of their contentions that the reversion is illusory or insubstantial or impossible of recognition because of inhibitions of the Commodities Clause of the Hepburn Act. The Supreme Court of Minnesota has rejected these contentions in both appeals, and on a previous occasion this Court denied certiorari.¹¹

⁸ In 1973 in the District Court of Ramsey County, Minnesota.

⁹ The Commodities Clause of the Hepburn Act was to become effective on May 1, 1908. At December 7, 1906, cautious minds may have entertained doubts as to the prospective effect of this legislation on further carriage by Great Northern Railway Company of ores severed from lands of corporations the stocks of which were owned by Lake Superior Company, Limited. Subsequent events have demonstrated that these doubts, if so entertained, were not well founded.

¹⁰ This evidence was objectionable as hearsay and as a violation of the parol evidence rule.

¹¹ *Arms v. Watson*, 429 U.S. 1001 (1976).

THE HEPBURN ACT

(and herein of the Commodities Clause)

The Hepburn Act, an amendment of the Interstate Commerce Act, enacted June 29, 1906, contained a so-called Commodities Clause the effective date of which was May 1, 1908. In relevant part the Commodities Clause is as follows:

"From and after May first, nineteen hundred and eight, it shall be unlawful for any railroad company to transport * * * any article or commodity * * * manufactured, mined, or produced by it, or under its authority, or which it may own in whole or in part, or in which it may have any interest, direct or indirect, except such articles or commodities as may be necessary and intended for use in the conduct of its business as a common carrier."

This is now 49 U.S.C. §1(8) (1971) except that the introductory phrase "From and after May first, nineteen hundred and eight" is omitted.¹²

THE PETITION PRESENTS NO QUESTION FOR REVIEW BY CERTIORARI UNDER 28 U.S.C. §1257 (3) (1971) AND THE RULES OF THIS COURT.

The Arms petition predicates jurisdiction for review upon a statement of the "Question Presented" as:

"Whether the Commodities Clause of the Hepburn Act, 49 U.S.C. §1(8), bars transfer of the title to vast taconite properties on the Mesabi Iron Range to Burlington Northern Inc., a railroad engaged in hauling that ore to market."

¹² It will be noted that this legislation has nothing to do with property rights but only with the transportation of commodities.

It is submitted that this is not a correct description of any substantive issue of the case; that the issue tendered by the petition herein is not responsive to the jurisdictional and procedural requirements of 28 U.S.C. §1257(3) (1971) and Rules 19 and 23 of this Court; and that no federal question is involved, substantial or otherwise.

The Arms petitioners now tardily concede that between December 7, 1906 and February 3, 1913 the trust reversion was free of Hepburn Act objections¹³ because until February 3, 1913 the reversion was retained by the settlor, Lake Superior Company, Limited.¹⁴ They now claim, however, that at and after February 3, 1913, the "bar of the statute" [the Commodities Clause] was imminent in the situation and continuously applicable "*whenever* the railroad might assert any interest in the mining properties, the produce of which it hauls to market."¹⁵ Because the previous judgment determined, and because the judgment below again recognizes that a valid reversion is vested in Burlington Northern Inc., this claim becomes the introduction to the final Arms assertion that "The

¹³ The Commodities Clause (not operative on December 7, 1906) was effective on and after May 1, 1908. The Arms petition states: "Of course the proscriptions of the Hepburn Act had no effect on the reversion until 1913"; also: "The proscriptions of the Hepburn Act, of course, did not make the Trust invalid in 1906." (Arms Petition, p. 15).

¹⁴ It is now said: "*Until then [1913] the railroad had no interest in the properties*" (Arms Petition, p. 15); also (as to the reversion limited to the settlor): "That limitation created no Hepburn Act problem because Lake Superior Company, Limited was not a carrier and it was not owned by the railroad" (Arms Petition, p. 8). This is less than descriptive. Lake Superior Company, Limited held all its assets (including the reversion) for Great Northern Railway Company under the contract of October 20, 1899 (*Annex B* hereof). The 1913 assignment of reversion to Great Northern Railway Company effected a change of form but not a change in the substance of Great Northern's interest. Both before and after the assignment of the reversion Great Northern had an expectancy (but no present interest) in the subject matter.

¹⁵ Arms Petition, p. 15.

Hepburn Act is made a dead letter" by the judgment below.¹⁶ The Arms petition describes the judgment as a judicial repeal of the Act which "frees also *all railroads everywhere* from the restraints of the Commodities Clause."¹⁷

The judgment below has none of the consequences envisaged by the Arms petitioners. It has no effect on the Hepburn Act or its enforcement.

The Commodities Clause is concerned exclusively with the transportation of commodities by railroads. It has nothing to do with the State law of property, legal and equitable estates, trusts, rules of evidence or construction of documents; it is not a source of Minnesota real estate titles; it is not a limitation upon the ownership of minerals; violations of the Act work no forfeiture of property interests and give rise to no escheat. No possible application of the Act can disturb the property rights adjudicated by the judgment below. On the other hand, the judgment below has nothing to do with the transportation of commodities by railroads. Property rights and railroad transportation are unrelated subjects.

If any violation of the Hepburn Act is identified in the case at bar (and this does not appear), the Act is properly to be enforced by suit of the Attorney General of the United States to require the offending railroad to desist from illegal transportation.¹⁸ This is not such a suit.

Apart from these considerations, however, the Arms petitioners have failed to make any showing of Hepburn Act violation. For upwards of seventy-three years the mineral properties of the trust have been developed by autonomous mining

¹⁶ Arms Petition, p. 16.

¹⁷ Arms Petition, p. 15.

¹⁸ Or by such other remedies as may be available for the enforcement of the Interstate Commerce Act.

companies under long term leases which enabled them, in independent mining operations, to mine, sever and become owners of the severed ore in consideration of the payment of royalties. Any property right of the trustees in the minerals terminates at severance. The transported commodity is ore belonging to autonomous mining companies. Neither the trustees nor the reversioner owns this ore.

The Commodities Clause looks to an appropriate separation of the ownership of commodities from their public carriage by railroad. Mr. Hill said as much (but no more) in his 1912 reminiscenses. In short, a railroad may not be the public carrier of its own ore. On the other hand, the Commodities Clause does not prohibit the transportation of commodities by a railroad merely because of antecedent acts of mining, manufacturing or production.

The decisions of this Court are to the effect that there is no unlawful carriage if, when transportation occurs, ownership of the commodities has passed to an independent owner-shipper.¹⁹ There is no authority to the contrary. The policy of the statute is satisfied. It is satisfied *a fortiori* in the instant case where the reversioner has no property rights in the transported ore and no connection with the subject matter other than a reversion of such mineral lands as may remain unmined in the hands of the trustees at the expiration of a term which will continue to some date more than twenty years hence.

¹⁹ *United States v. Delaware & Hudson Co.*, 213 U.S. 366 (1909). Even where the carrier and the owner-shipper are related by stock ownership the result is the same, assuming only that one is not the alter ego of the other. *United States v. Elgin, Joliet & Eastern Railway Co.*, 298 U.S. 492 (1936); *United States v. South Buffalo Railway Co.*, 333 U.S. 771 (1948).

It is necessary to reject without qualification the Arms portrayal of the judgment below as a gratuitous transfer of vast properties to the reversioner under circumstances amounting to confiscation of the term interest and gross windfall to the reversioner.²⁰ The Great Northern Iron Ore Properties trust, established in 1906, was in substance and effect neither more nor less than a spin-off by Great Northern Railway Company of a clearly stated term interest in mineral properties to stockholders of record at the close of business on December 6, 1906, with a reserved reversion to Great Northern Railway Company at the end of the term. The judgment below impairs no rights of the term tenants, transfers nothing to the reversioner and creates no windfall in any amount. It merely preserves to the reversioner what was clearly reserved to the reversioner in the trust instrument of 1906.²¹

²⁰ See Arms Petition, pages 2, 11, 12, 18.

²¹ If the matter is to be described in pejorative terms, it might be said that the Arms claims are designed to convert an expressly limited term estate into an instant fee simple by an unjustifiedfeat of construction.

CONCLUSION

The Respondent Burlington Northern Inc. submits that the circumstances requisite to sustain jurisdiction under 28 U.S.C. §1257(3) (1971) are absent; that the case presents no question of substance under any federal statute and that no reason exists under Rule 19 for issuance of the Writ.

Respectfully submitted,

J. NEIL MORTON
RICHARD E. KYLE
STEVE A. BRAND
FRANK S. FARRELL

Attorneys for Respondent
Burlington Northern Inc.

Briggs and Morgan
Of Counsel

APPENDIX

ANNEX A
TRUST AGREEMENT

AGREEMENT, Made this Seventh day of December, A. D. 1906, by and between the LAKE SUPERIOR COMPANY, LIMITED, an association organized under the laws of the State of Michigan, party of the first part, and LOUIS W. HILL, JAMES N. HILL, WALTER J. HILL and EDWARD T. NICHOLS, parties of the second part, Witnesseth:

WHEREAS, The party of the first part has acquired the shares of stock hereinafter described and transferred, and now holds the same for the benefits of the shareholders of The Great Northern Railway Company; and

WHEREAS, By contract between the party of the first part and said railway company, bearing date the 20th day of October, A. D. 1899, the right is reserved to said railway company to authorize or direct, by resolution of its Board of Directors approved by its stockholders, a transfer of said shares of stock by said party of the first part; and

WHEREAS, The said Board of Directors, at a meeting duly held on the 14th day of November, A. D., 1906, did, by resolution, authorize and direct the said party of the first part to enter into this agreement and make the transfer herein made, upon the terms and conditions herein set forth, which resolution has been approved by the stockholders of said railway company at an adjourned annual meeting held on the 19th day of November, A. D. 1906,

NOW THEREFORE, The party of the first part doth hereby assign, transfer and set over unto the parties of the second

part, hereinafter called the "trustees", and to the survivors and survivor of them, and to their successors in the trust herein created, and to their assigns, all and singular the following described personal property, to-wit:

Seven hundred and fifty (750) shares of the par value of One thousand dollars (1000.00) each of the capital stock of the West Missabe Land Company, Limited; Five thousand eight hundred and seventy-nine (5879) shares of the par value of One hundred dollars (\$100.00) each of the capital stock of the North Star Iron Company; One thousand (1000) shares of the par value of One hundred dollars (\$100.00) each of the capital stock of the Leonard Iron Mining Company; Five hundred (500) shares of the par value of One Hundred dollars (\$100.00) each of the capital stock of the Tyler Iron Mining Company; Five hundred (500) shares of the par value of One hundred dollars (\$100.00) each of the capital stock of the Harrison Iron Mining Company; Five hundred (500) shares of the par value of One Hundred dollars (\$100.00) each of the capital stock of the Jackson Iron Mining Company; Five hundred (500) shares of the par value of One hundred dollars (\$100.00) each of the capital stock of the Polk Iron Mining Company; Five hundred (500) shares of the par value of One hundred dollars (\$100.00) each of the capital stock of the Fillmore Iron Mining Company; Five hundred (500) shares of the par value of One hundred dollars (\$100.00) each of the capital stock of the Arthur Iron Mining Company, and Five (5) shares of the par value of One hundred dollars (\$100.00) each of the capital stock of the Van Buren Iron Mining Company.

TO HAVE AND TO HOLD all and singular the said shares of stock, and any and all shares of stock or other property for which said shares or any of them may at any time be exchanged, or which may at any time accrue to the shareholders of said companies or any of them, or of the successors of any of them, whether by reason of the dissolution of any such company or for any other cause, with all and singular the rights and powers of shareholders in respect thereof, and full power of sale or other disposition thereof, as hereinafter provided, to said trustees, and the survivors or survivor of them, and their said successors and assigns.

IN TRUST, HOWEVER, to hold, use and dispose of the said property and all income and proceeds thereof, upon the trust herein expressed, for and during the lives of the following named persons and the like of the last survivor of them, and for and during the twenty (20) years next following the death of such last survivor, unless said trust shall be sooner determined, the names and description of said persons upon whose lives the duration of said trust is limited, being:

Louis Hill, James Jerome Hill and Cortlandt Hill, sons of Louis W. Hill, of St. Paul, Minnesota; George Norman Slade, son of George T. Slade, of said St. Paul; Francis John Ward and Lawrence Ward, sons of Frank E. Ward, of said St. Paul; Walter Jerome Hill, son of James J. Hill, of said St. Paul; Thayer B. Farrington and John D. Farrington, sons of Robert I. Farrington, of said St. Paul; Howard Elliott, Jr., son of Howard Elliott, of said St. Paul; Jule M. Hannaford, Jr., and Foster Hannaford, sons of Jule M. Hannaford, of said St. Paul; Payne Whitney, of New York City; George F. Baker, Jr., son of George F. Baker, of New York City; Samuel Thorne, Jr., son of Samuel Thorne, of New York City; Robert

L. Bacon, Gaspar C. Bacon and Elliott C. Bacon, sons of Robert Bacon, of Washington, D.C.

1. The trustees hereunder shall, while holding said shares of stock or any of them of any of such corporations, use and exercise their powers as such shareholders to preserve the existence and the organization of such corporation, and to secure at all times proper management of the property and business and affairs of such corporation.

2. Said trustees shall, at all times, while holding said shares or any of them or any property subject to this trust, collect and receive all dividends declared upon such shares, and all other income or profits or other moneys that may accrue to them, or to which they may become entitled as holders of such shares or other property.

3. Said trustees shall, out of the moneys so received by them, or out of the proceeds of any sales made by them of any of said shares, pay all expenses of said trust, including taxes, if any, and the compensation hereinafter provided to themselves as trustees. And in no event shall they have recourse to the certificate holders mentioned for the payment of any part of such expenses or payments or any liability incurred by said trustees.

4. After payment made of or provision made for the expenses of said trust, the said trustees shall, from time to time, and at least once in every year, distribute and pay such portion of the net income or proceeds of the property held by them as such trustees, as they may deem proper to be so distributed, among and to the persons appearing as shareholders of the Great Northern Railway Company, registered as such upon its books at the close of business on the 6th day of December, A.D. 1906, and to their assigns, under and by virtue of assign-

ments made in accordance with the provisions therefore hereinafter contained.

5. The interest of the persons made beneficiaries under said trust shall consist of One million five hundred thousand (1,500,000) equal shares, each original beneficiary being entitled to receive the number of shares, and a certificate therefor, as hereinafter provided, in said trust equal to the number of shares of stock of the Great Northern Railway Company registered at the date last aforesaid in his name as the holder thereof on the books of said company.

A list of said original beneficiaries showing their respective names and addresses, and the number of shares to which each is entitled under said trust, signed by the chairman of the party of the first part and by the parties of the second part hereto, is appended to this instrument.

6. The interest of each and every beneficiary under said trust is and shall continue to be limited to the right to receive his proportional share or dividend in such distributions as shall, from time to time, have been determined on and declared by said trustees as hereinbefore provided.

7. The trustees shall cause to be prepared certificates of beneficial interest under said trust, which shall be identical in form, but may be of several series, according to the respective denominations thereof. The certificates of each series shall bear their proper serial designation and shall be numbered consecutively from one upward. Each certificate shall state the proportional interest or number of shares to which the person named therein is entitled under said trust, and such interest shall be assignable only by the person named therein and registered as holder thereof on the books of the trustees, by transfer in writing in person or by his duly authorized at-

torney, and upon surrender of the certificates representing such interest.

Such assignment may be of all, or any number less than all, of the shares represented by such certificate, but not of any fraction of a share. Nor shall any fraction of a share be represented by or included in any of said certificates.

8. Upon the issue of any certificate the trustees shall enter the same in a book or books to be kept by them for that purpose, such entry to show the number and date of such certificate, the number of shares represented thereby, the name of the person entitled to said shares, his residence or address as given to them on the issue of such certificate, or from time to time thereafter, and such other matters as the trustees may deem proper.

And no person not so registered shall be deemed a certificate holder or entitled to any beneficial interest under said trust.

And all dividend cheques, reports, notices or other communications sent by mail, postage prepaid, to any registered holder at such registered address, or to an agent or attorney for the purpose by such holder at the address given therefor by such holder, shall be equivalent to a personal delivery to such holder of the matter so sent.

The trustees shall, by writing recorded in the record of their proceedings, appoint a corporation Registrar of Transfers who shall countersign and enter in a register to be kept by it for the purpose each and every certificate issued by the trustees. Such registry shall show the number and date of each certificate, the number of shares represented thereby and the name of the owner, as recorded on the face thereof. When any certificate shall be in any manner canceled the Registrar shall make a detailed entry thereof in said register. No certificate shall be valid unless countersigned by the Registrar.

The trustees may, in their discretion, by writing recorded in the record of their proceedings, appoint a transfer agent or agents, who shall make transfers of certificates, and who shall keep a record of all certificates issued or canceled through their agency, and shall countersign each and every certificate so issued. No certificate so issued shall be valid unless so countersigned.

The trustees or any of them may, by writing recorded in the record of their proceedings, appoint agents or attorneys who shall sign certificates on his or their behalf and in his or their names as such trustees.

The trustees may, at any time, by writing recorded in the record of their proceedings, remove any such registrar of transfers, transfer agent or other agent or attorney and appoint another in his place.

9. The trustees shall have full power, during the continuance of this trust, to sell at public or private sale, or exchange for other property, or otherwise dispose of all or any part of the shares of stock hereby transferred to them or any other property that may have become subject to this trust; and to invest the proceeds of any such sale or sales in other property; and in case of such re-investment the property so acquired, as well as all property acquired by the trustees in exchange, or otherwise, for property held by them under this trust, shall be held by the trustees under the same trust and with the same powers and duties in respect thereto as are hereby provided in respect to the property herein described and conveyed.

10. The trustees are hereby empowered to hire such suitable offices and employ such clerks, attorneys, mining engineers and other agents or other persons as they may deem requisite for the proper execution of this trust, and all such expenses and all others incurred by them in the execution of the trust

shall be a prior charge thereon to be paid or provided for before divisions of income or other moneys among the certificate holders.

11. The trustees shall keep books of account of their receipts and expenses and business transactions in the execution of such trust, and a record of their own proceedings at their meetings.

They shall make an annual report of their receipts and disbursements, and of the condition of the trust, a copy of which report shall be sent to each certificate holder.

12. Any trustee may at any time resign his trust by writing signed by him and delivered to the remaining trustees or trustee, accompanied by a proper transfer and release of his title to and interest in the trust property. In case of the death or resignation of any trustee the vacancy thereby created shall be filled by the remaining trustees or trustee by resolution and appointment in writing, recorded in the book of record of their proceedings. If at any time there should be but a single trustee remaining, he shall first appoint one trustee, and those two shall appoint a third. If at any time there should be no trustee existing or capable of acting, the Board of Directors of the Great Northern Railway Company, or of such corporation if any as shall then be the successor of that company, may appoint one or more trustees.

When any trustee shall become unable to act by reason of illness, absence, or other cause, the other trustees, after first making a record of such fact in the minutes of their proceedings, shall have and may exercise all the powers herein conferred upon all the trustees.

Any trustee may from time to time, by power of attorney duly executed, delegate his powers for a period not exceeding twelve (12) months at any one time to the other trustees or

to either of them, and every such power of attorney shall be recorded in the record of the proceedings of the trustees.

13. The trustees shall organize and choose one of their number president, and in case of vacancy in that office shall elect one of their number to fill such vacancy. The president shall be the active manager and executive officer in carrying on the business devolving on the trustees. Until the gross income of the trust shall equal Five million dollars (\$5,000,000.00) in any one year, he shall receive a compensation of Twenty-five thousand dollars (\$25,000.00) per annum. And in each year thereafter he shall receive, in addition to the said sum of Twenty-five thousand dollars (\$25,000.00) a sum equal to one per cent of the excess of the gross income of the trust for that year over Five million dollars (\$5,000,000.00) until his annual compensation shall reach the sum of Fifty thousand dollars (\$50,000.00), at which amount it shall remain without further increase.

The trustees may, from time to time, by writing recorded in the record of their proceedings, designate one of their number to sign dividend cheques and other cheques drawn against the trust funds, and all cheques signed by the trustees so designated shall be of the same validity and effect as if signed by all the trustees.

The compensation of each of the trustees other than the president shall be Ten thousand dollars (\$10,000.00) per year.

14. The trustees, for the better accomplishment of the purposes hereof, may, from time to time, adopt rules not in consistent with the provisions hereof for the management of said trust and the government of their proceedings, and may from time to time modify, amend or abrogate any rule so adopted.

15. The trustees shall be responsible only for wilful breach

of trust, and each shall be responsible only for his own acts and defaults, and not for those of any other trustee.

16. The word "trustees", where used in this instrument, shall be deemed to mean those who may at any time be trustees hereunder.

17. Upon the expiration of the twenty (20) years next following the death of the last survivor of the before mentioned persons upon whose lives the said trust is limited, the trustees shall at once proceed to wind up the affairs of said trust. After paying or providing for all expenses or obligations of the trust they shall distribute ratably among the certificate holders all moneys remaining in their hands as such trustees, and shall convey and transfer unto the party of the first part, or its successors, or assigns, all property, save said moneys, held by them under said trust.

And thereupon said trust shall cease.

18. The said parties of the second part hereby accept the transfer made and the trust herein expressed.

IN WITNESS WHEREOF, The party of the first part hath caused these presents to be executed, in duplicate, by its proper officers, in that behalf duly authorized, and the second parties have to each duplicate set their hands and seals the day and year first above written.

LAKE SUPERIOR
COMPANY, LIMITED
By JAS. J. HILL

Chairman

Attest: LOUIS W. HILL

Secretary

LOUIS W. HILL

JAS. N. HILL

WALTER J. HILL

EDWARD T. NICHOLS

Executed in presence of:

M. R. BROWN

F. S. DALRYMPLE

(Corporate Seal)

M. R. BROWN

F. S. DALRYMPLE

ANNEX B
 CONTRACT OF LAKE SUPERIOR COMPANY,
 LIMITED AND GREAT NORTHERN RAILWAY,
 OCTOBER 20, 1899

THIS CONTRACT, Entered into this 20th day of *October*, 1899, between the GREAT NORTHERN RAILWAY COMPANY, hereinafter called the Northern Company, and the LAKE SUPERIOR COMPANY, LIMITED, hereinafter called the Superior Company, an association organized under the laws of the State of Michigan,

WITNESSETH:

I

That stocks, bonds and properties have been transferred to the Superior Company, as follows:

[the description is here omitted]

II

It is agreed by and between the Northern Company and the Superior Company, in consideration of the transfer of said stock, bonds and property, and as a condition thereof:

1. That the Superior Company shall not sell, transfer or assign any of such stocks, bonds or properties, nor any part thereof, without the consent of the Northern Company; and there shall be printed or stamped upon each certificate of said stocks a notice that the same is not assignable or transferable except with the approval of the Great Northern Railway Company endorsed thereon, and signed by its President or other fully authorized officer.

2. The Superior Company shall, out of the income derived from the stocks, bonds and properties so transferred, pay all taxes accruing upon the same, all necessary expenses of administration, operation, maintenance and repair, and also the

cost of acquiring any additional equipment, property or improvements.

3. After paying out of the said income, taxes, expenses of administration, operation, maintenance and repair, and the cost of acquiring additional property, equipment, and improvements, the Superior Company will, when requested by the Northern Company, pay the balance of the total income received by it on account of such stocks, bonds and properties, to the stockholders of the Northern Company as they may appear of record at the date of closing the stock transfer books of that company for some regular dividends, ratably, in proportion to their respective holdings of the Northern Company's stock. But such request for payment shall not be made until the amount of such total net profits, income or receipts shall equal at least one-half of one per cent of the amount of the stock of the Great Northern Company outstanding at the time.

The Board of Directors of the Northern Company, may, by resolution approved by its stockholders, direct that such profits, income or dividends received by the Superior Company, instead of being paid out in the form of dividends to the stockholders of the Northern Company shall be used for the purpose of acquiring other property, or for such other uses or purposes and upon such terms and conditions as may be set forth in such resolution. The Superior Company agrees that it will comply with the provisions and requirements of such resolutions.

4. The Northern Company may, by resolution adopted by its Board of Directors and approved by stockholders, authorize or direct the Superior Company to lease, sell, transfer or exchange the property and assets of either or all of said companies or associations, or any part thereof, and the proceeds or receipts derived from such sale, lease or exchange shall be

held by it and accounted for or disposed of as required by such resolution.

5. Upon demand of the Northern Company, made by resolution of its Board of Directors, approved by its stockholders, the Superior Company agrees to transfer the stock, bonds and properties held by it hereunder, in whole or in part, to the Northern Company, or to such other body or person as may be designated by such resolution, and that it will comply with the provisions and requirements of such resolution in that regard.

6. Action of the stockholders of the Northern Company authorized or required under the provisions of this contract shall be in the form of resolutions to be adopted at their annual meeting or at an adjournment thereof, or at some other regularly called meeting. At such meeting of the stockholders the votes of a majority of the shares of the stock of the Northern Company present and voting shall be final and conclusive as respects any matter embraced in this contract, and have the same force and effect as though owners of all the stock had been present and by their action concurred therein.

7. Copies of resolutions relating to the matters covered by this contract, adopted by the Board of Directors of the Northern Company, or by its stockholders, certified by the Secretary or Assistant Secretary of the Great Northern Railway Company to be correct, shall be delivered to the Superior Company, and it shall accept such resolution as its authority to act and shall be governed by them as respects matters coming within the provisions of this contract.

IN WITNESS WHEREOF, The parties hereto have caused this instrument to be executed by their duly authorized officers. * * *